



Palo Verde Nuclear  
Generating Station

David Mauldin  
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102-05162-CDM/SAB/RJR  
October 21, 2004

**10 CFR 2.390**

Mail Station 7605  
P.O. Box 52034  
Phoenix, AZ 85072-2034

ATTN: Document Control Desk  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Sirs:

**Subject: Palo Verde Nuclear Generating Station (PVNGS)  
Units 1, 2 and 3  
Docket No. STN 50-528, 50-529 and 50-530  
Response to Request for Copy of Westinghouse  
Proprietary Document WCAP-16044-P, Revision 0**

On October 4, 2004, the NRC Staff requested a copy of Westinghouse document WCAP-16044-P, "Structural Integrity Evaluation of Reactor Vessel Upper Head Penetrations to Support Continued Operation: Palo Verde Unit 3." On October 7, 2004, Arizona Public Service Company (APS) provided an electronic version of this document to the Palo Verde NRC Project Manager.

Enclosure 2 contains a "Hard-Copy" of the information transmitted electronically on October 7, 2004. Since this information is considered proprietary to Westinghouse Electric Company LLC, it is supported by an affidavit (Enclosure 1) signed by Westinghouse, the owner of the information. The affidavit sets forth the basis on which the information may be withheld from public disclosure by the Commission and addresses with specificity the considerations listed in paragraph (b)(4) of Section 2.390 of the Commission's regulations. Accordingly, it is respectfully requested that the information which is proprietary to Westinghouse be withheld from public disclosure in accordance with 10 CFR Section 2.390 of the Commission's regulations.

Correspondence with respect to the copyright or proprietary aspects of the items listed in the enclosures of this letter should reference CAW-04-1904 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance and Plant Licensing, Westinghouse Electric Company LLC, P.O. Box 355, Pittsburgh, Pennsylvania 15230-0355.

APOL

A member of the **STARS** (Strategic Teaming and Resource Sharing) Alliance

Callaway • Comanche Peak • Diablo Canyon • Palo Verde • South Texas Project • Wolf Creek

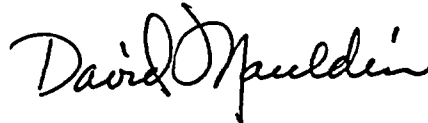
Attn: Document Control Desk

Response to Request for Copy of Westinghouse Document

WCAP-16044-P, Revision 0

This letter contains no new commitments. Should you have any questions, please contact Thomas N. Weber at (623) 393-5764.

Sincerely,



CDM/SAB/RJR/

Enclosure 1: Westinghouse authorization letter CAW-04-1904, accompanying affidavit, Proprietary Information Notice, and Copyright Notice

Enclosure 2: WCAP-16044-P, Revision 0, Structural Integrity Evaluation of Reactor Vessel Upper Head Penetrations to Support Continued Operation: Palo Verde Unit 3 (Proprietary)

cc:

J. E. Dyer	(w/o Enclosures)
B. S. Mallett	(w/o Enclosures)
M. B. Fields	(w/o Enclosure 2)
N. L. Salgado	(w/o Enclosures)

**Enclosure 1:**

**Westinghouse authorization letter CAW-04-1904, accompanying affidavit, Proprietary Information Notice, and Copyright Notice**



Westinghouse Electric Company  
Nuclear Services  
P.O. Box 355  
Pittsburgh, Pennsylvania 15230-0355  
USA

U.S. Nuclear Regulatory Commission  
Document Control Desk  
Washington, DC 20555-0001

Direct tel: (412) 374-4643  
Direct fax: (412) 374-4011  
e-mail: greshaja@westinghouse.com

Our ref: CAW-04-1904

October 13, 2004

**APPLICATION FOR WITHHOLDING PROPRIETARY  
INFORMATION FROM PUBLIC DISCLOSURE**

Subject: WCAP-16044-P, Rev. 0, "Structural Integrity Evaluation of Reactor Vessel Upper Head Penetrations to Support Continued Operation: Palo Verde Unit 3," dated June 2003 (Proprietary)

The proprietary information for which withholding is being requested in the above-referenced report is further identified in Affidavit CAW-04-1904 signed by the owner of the proprietary information, Westinghouse Electric Company LLC. The affidavit, which accompanies this letter, sets forth the basis on which the information may be withheld from public disclosure by the Commission and addresses with specificity the considerations listed in paragraph (b)(4) of 10 CFR Section 2.390 of the Commission's regulations.

Accordingly, this letter authorizes the utilization of the accompanying affidavit by Arizona Public Service Company.

Correspondence with respect to the proprietary aspects of the application for withholding or the Westinghouse affidavit should reference this letter, CAW-04-1904, and should be addressed to J. A. Gresham, Manager, Regulatory Compliance and Plant Licensing, Westinghouse Electric Company LLC, P.O. Box 355, Pittsburgh, Pennsylvania 15230-0355.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. Gresham", written over a horizontal line.

J. A. Gresham, Manager  
Regulatory Compliance and Plant Licensing

Enclosures

cc: W. Macon, NRC  
E. Peyton, NRC

bcc: J. A. Gresham (ECE 4-7A) 1L  
R. Bastien, 1L, 1A (Nivelles, Belgium)  
C. Brinkman, 1L, 1A (Westinghouse Electric Co., 12300 Twinbrook Parkway, Suite 330, Rockville, MD 20852)  
RCPL Administrative Aide (ECE 4-7A) 1L, 1A (letter and affidavit only)

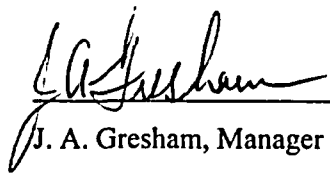
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COMMONWEALTH OF PENNSYLVANIA:

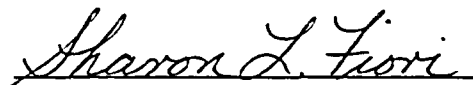
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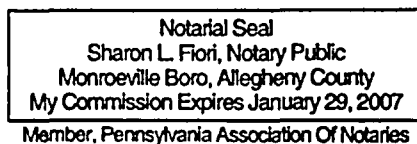
COUNTY OF ALLEGHENY:

Before me, the undersigned authority, personally appeared J. A. Gresham, who, being by me duly sworn according to law, deposes and says that he is authorized to execute this Affidavit on behalf of Westinghouse Electric Company LLC (Westinghouse), and that the averments of fact set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief:

  
J. A. Gresham, Manager  
Regulatory Compliance and Plant Licensing

Sworn to and subscribed  
before me this 13<sup>th</sup> day  
of October, 2004

  
Notary Public



- (1) I am Manager, Regulatory Compliance and Plant Licensing, in Nuclear Services, Westinghouse Electric Company LLC (Westinghouse), and as such, I have been specifically delegated the function of reviewing the proprietary information sought to be withheld from public disclosure in connection with nuclear power plant licensing and rule making proceedings, and am authorized to apply for its withholding on behalf of Westinghouse.
- (2) I am making this Affidavit in conformance with the provisions of 10 CFR Section 2.390 of the Commission's regulations and in conjunction with the Westinghouse "Application for Withholding" accompanying this Affidavit.
- (3) I have personal knowledge of the criteria and procedures utilized by Westinghouse in designating information as a trade secret, privileged or as confidential commercial or financial information.
- (4) Pursuant to the provisions of paragraph (b)(4) of Section 2.390 of the Commission's regulations, the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.
  - (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
  - (ii) The information is of a type customarily held in confidence by Westinghouse and not customarily disclosed to the public. Westinghouse has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence. The application of that system and the substance of that system constitutes Westinghouse policy and provides the rational basis required.

Under that system, information is held in confidence if it falls in one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

    - (a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of

Westinghouse's competitors without license from Westinghouse constitutes a competitive economic advantage over other companies.

- (b) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
- (c) Its use by a competitor would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.
- (d) It reveals cost or price information, production capacities, budget levels, or commercial strategies of Westinghouse, its customers or suppliers.
- (e) It reveals aspects of past, present, or future Westinghouse or customer funded development plans and programs of potential commercial value to Westinghouse.
- (f) It contains patentable ideas, for which patent protection may be desirable.

There are sound policy reasons behind the Westinghouse system which include the following:

- (a) The use of such information by Westinghouse gives Westinghouse a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Westinghouse competitive position.
- (b) It is information that is marketable in many ways. The extent to which such information is available to competitors diminishes the Westinghouse ability to sell products and services involving the use of the information.
- (c) Use by our competitor would put Westinghouse at a competitive disadvantage by reducing his expenditure of resources at our expense.



- (d) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component may be the key to the entire puzzle, thereby depriving Westinghouse of a competitive advantage.
  - (e) Unrestricted disclosure would jeopardize the position of prominence of Westinghouse in the world market, and thereby give a market advantage to the competition of those countries.
  - (f) The Westinghouse capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- (iii) The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390, it is to be received in confidence by the Commission.
- (iv) The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.
- (v) The proprietary information sought to be withheld in this submittal is that which is appropriately marked in WCAP-16044-P, Rev. 0, "Structural Integrity Evaluation of Reactor Vessel Upper Head Penetrations to Support Continued Operation: Palo Verde Unit 3" (Proprietary) dated June 2003, being transmitted by Arizona Public Service Company letter and Application for Withholding Proprietary Information from Public Disclosure, to the Document Control Desk. The proprietary information as submitted for use by Westinghouse for Palo Verde Unit 3 is expected to be applicable for other licensee submittals in response to certain NRC requirements for justification of the use of fracture mechanics analyses to support continued safe operation of Palo Verde Unit 3 with the presence of a crack in a control element drive mechanism head penetration.

This information is part of that which will enable Westinghouse to:

- (a) Determine the allowable time of safe operation if cracks are found.
- (b) Assist the customer to obtain NRC approval.

Further this information has substantial commercial value as follows:

- (a) Westinghouse plans to sell the use of similar information to its customers for purposes of meeting NRC requirements for licensing documentation.
- (b) Westinghouse can sell support and defense of continued safe operation with the presence of cracks in a control rod drive head penetration.
- (c) The information requested to be withheld reveals the distinguishing aspects of a methodology which was developed by Westinghouse.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of Westinghouse because it would enhance the ability of competitors to provide similar calculations and licensing defense services for commercial power reactors without commensurate expenses. Also, public disclosure of the information would enable others to use the information to meet NRC requirements for licensing documentation without purchasing the right to use the information.

The development of the technology described in part by the information is the result of applying the results of many years of experience in an intensive Westinghouse effort and the expenditure of a considerable sum of money.

In order for competitors of Westinghouse to duplicate this information, similar technical programs would have to be performed and a significant manpower effort, having the requisite talent and experience, would have to be expended.

Further the deponent sayeth not.

## **PROPRIETARY INFORMATION NOTICE**

Transmitted herewith are proprietary and/or non-proprietary versions of documents furnished to the NRC in connection with requests for generic and/or plant-specific review and approval.

In order to conform to the requirements of 10 CFR 2.390 of the Commission's regulations concerning the protection of proprietary information so submitted to the NRC, the information which is proprietary in the proprietary versions is contained within brackets, and where the proprietary information has been deleted in the non-proprietary versions, only the brackets remain (the information that was contained within the brackets in the proprietary versions having been deleted). The justification for claiming the information so designated as proprietary is indicated in both versions by means of lower case letters (a) through (f) located as a superscript immediately following the brackets enclosing each item of information being identified as proprietary or in the margin opposite such information. These lower case letters refer to the types of information Westinghouse customarily holds in confidence identified in Sections (4)(ii)(a) through (4)(ii)(f) of the affidavit accompanying this transmittal pursuant to 10 CFR 2.390(b)(1).